

**Neifeld Docket No:** CAT/34-SCRO-US

Application/Patent No: 08/873,974

USPTO CONFIRMATION NO: 2461

File/Issue Date: 6/12/1997, CPA FILED AUGUST 17, 1999, PARENT FILED

Inventor/Title: SCROGGIE/SYSTEM AND METHOD FOR DISTRIBUTING INFORMATION  
THROUGH COOPERATIVE COMMUNICATION NETWORK SITES

Examiner/ArtUnit: ROBINSON/3628

**37 CFR 1.7(c) FILING RECEIPT AND TRANSMITTAL LETTER WITH  
AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT**

1. **THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY FEES  
WHICH MAY BE REQUIRED, OR CREDIT ANY OVERPAYMENT, TO DEPOSIT  
ACCOUNT NUMBER 50-2106.**

2. **FEES (PAID HEREWITH BY EFS CREDIT CARD SUBMISSION) \$: 0**

**A. CLAIMS FEES \$: 0**

\$ 0- ( claims previously paid for; currently present; \$50 per addl. claim over 20.)

\$ 0- ( independent previously paid for; currently present; \$200 per addl. claim over 3)

**B. APPEAL FEES \$: 0**

3. **THE FOLLOWING DOCUMENTS ARE SUBMITTED HEREWITH:**

37 CFR 41.41 REPLY BRIEF TO *SECOND* EXAMINER'S ANSWER

4. **FOR INTERNAL NEIFELD IP LAW, PC USE ONLY**

USPTO CHARGES \$: CLIENT BILLING MATTER: BANK ACCOUNT/Check: 6/ G/L ACCOUNT:5010	FIRM CHARGES \$: DESCRIPTION: FIRM CHARGE FOR LAWYER: ran
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INITIALS OF PERSON WHO **ENTERED** ACCOUNTING DATA: ran

ATTORNEY SIGNATURE (AUTHORIZING DEPOSIT ACCOUNT)

**DATE:** 8-14-2009 **SIGNATURE:** /RichardNeifeld#35,299/

Printed: August 14, 2009 (5:47pm)

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-15-2009.wpd

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ASSISTANT COMMISSION FOR PATENTS  
WASHINGTON, D.C. 20231

37 CFR 41.41 REPLY BRIEF TO *SECOND* EXAMINER'S ANSWER

SIR: In response to the examiner's answer dated 7/8/2009, the applicant files this reply brief.

## **I. RESPONSE**

On the merits of the examiner's answer dated 7/8/2009, it contains no new arguments. All of the issues raised by that examiner's answer were addressed by the reply brief filed 6/8/2009. The appellant relies upon that prior reply brief. Moreover, the BPAI should exclude consideration of the second examiner's answer addressing the same appeal brief because the rules contemplate only "*a* written answer", not plural answers, to an appeal brief. 37 CFR 41.39(a)(1).

## **II. COMPLAINT**

The applicant is transmitting a copy of this reply brief to the Director's office, along with a letter requesting the Director take action to prevent the examining corps behaving in this fashion in the future, specifically to sensitize the members of the corps to the consequences on the applicants, of their actions or inactions.

## **III. STATEMENT OF MATERIAL FACTS**

The USPTO dated an examiner's answer 5/29/2009. It is 41 pages long.

The appellant filed a reply brief on 6/8/2009 to the 5/29/2009 examiner's answer.

The USPTO dated a paper 6/24/2009 stating "The reply brief filed 6/8/09 has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal."

The USPTO dated a second examiner's answer 7/8/2009. It is 41 pages long.

The examiner's answer dated 7/8/2009, numbered page 3, first line, states "This is in response to the appeal brief filed 8/22/08 appealing from the Office action mailed 5/3/2008." That is the same brief identified as the brief to which the first examiner's answer was responsive.

After time spent considering the substance of the second examiner's answer dated 7/8/2009 and how to respond, the undersigned reviewed the prior examiner's answer and then compared, paragraph by paragraph, the examiner's answers dated 5/29/2009 and 7/8/2009.

The examiner's answer dated 7/8/2009 is, as far as the undersigned can tell from that review, substantively identical to the examiner's answer dated 5/29/2009.

Attached to the end of the examiner's answer dated 7/8/2009 is an IDS containing initials of the examiner dated 7/2/2009, that is a date after the USPTO's paper noting the reply brief filed 6/8/2009.

#### IV. REASONING FOR THE COMPLAINT

The second examiner's answer on this appeal dated 7/8/2009's statement that it is "in response to the appeal brief filed 8/22/08" is both false and misleading. The 7/8/2009 examiner's answer is almost certainly, given the existence of the 6/24/2009 USPTO paper noting the file being forwarded to the BPAI, in response some off the record internal requirement for the examiner to correct the record by noting references filed in an IDS and not yet of record.

The de facto re-issuance of the same examiner's answer, as a convenient for the examining corps mechanism to get the IDS entered on the record, without thought of the consequences to the applicant, is both procedurally improper, and evidences a lack of concern for the applicant.

The second examiner's answer is procedurally improper because 37 CFR 41.39 contemplates "a written answer to the appeal brief", not multiple answers in response to one appeal brief.

The second examiner's answer evidences a lack of concern for the applicant because it fails to identify to the applicant that it was, in fact, not a new examiner's answer, was only issued in response to some other issue other than the appeal brief, that it raised no new issues on the merits, and in fact it affirmatively represented, improperly, that it was in response to the appeal brief, thereby requiring the undersigned's substantive review.

Respectfully Submitted

8-14-2009

/RichardNeifeld#35,299/

Richard Neifeld, Registration No. 35,299

Attorney of Record

ran

date/time code: August 14, 2009 (5:47pm)

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